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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 BOARD OF TRUSTEES OF THE
12 NORTHERN CALIFORNIA FLOOR
COVERING, et al.

13 Plaintiffs,

14 vs.

15 BEVIL'S FLOOR SERVICE, etc.,

16 Defendant.
17

Case No. C 07 3207 JL

NOTICE OF MOTION AND
MOTION FOR DEFAULT
JUDGMENT AND ATTORNEYS'
FEES; POINTS AND AUTHORITIES
IN SUPPORT THEREOF

[F.R.C.P. 55 (b)(2)]

Hearing Date: June 18, 2008

Time: 9:30 a.m.

Courtroom F, 15th Floor

18 TO: DEFENDANT

19 PLEASE TAKE NOTICE that on Wednesday, June 18, 2008 at 9:30 a.m., or as
20 soon thereafter as counsel may be heard, before the Honorable Judge James Larson, Magistrate
21 Judge of the United States District Court, Northern District of California, 450 Golden Gate
22 Avenue, Courtroom F, 15th Floor, San Francisco, CA, plaintiffs, BOARD OF TRUSTEES OF
23 THE NORTHERN CALIFORNIA FLOOR COVERING INDUSTRY WELFARE FUND,
24 STEVE HAVENS, TRUSTEE, will and do move this court, pursuant to Rule 55 (b)(2) of the
25 Federal Rules of Civil Procedure, to enter a default judgment and award plaintiffs unpaid and
26 owing liquidated damages, interest, court costs and attorneys' fees.

27 This motion is made on the grounds that defendant has failed to appear herein after
28 valid service, the default of defendant was entered by this Court on December 13, 2007, and there

are no triable issues of fact or disputes at law. Defendant has a contractual obligation to pay contributions to the BOARD OF TRUSTEES OF THE NORTHERN CALIFORNIA FLOOR COVERING INDUSTRY WELFARE FUND, and has failed to properly pay on behalf of covered employees in a timely manner. This motion is based upon this Notice, the Declarations of Rose Cortez and Michael J. Carroll in support of this motion, the Memorandum of Points and Authorities in support of this motion filed herewith, and such other oral or documentary evidence as may be presented at the hearing of this motion.

Dated: May 13, 2008

ERSKINE & TULLEY
A PROFESSIONAL CORPORATION

By: /s/ Michael J. Carroll
Michael J. Carroll
Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In this ERISA collection action plaintiffs, BOARD OF TRUSTEES OF THE NORTHERN CALIFORNIA FLOOR COVERING INDUSTRY WELFARE FUND; STEVE HAVENS, TRUSTEE, seek to recover liquidated damages, and interest on delinquent employee benefit contribution payments for the months of June 2007 through February 2008. The total amount due is \$32,514.90.

Defendant, BEVIL'S FLOOR SERVICE, INC., a California corporation, is an employer which is delinquent in its contribution obligations.

Under the terms of the Trust Agreement a contribution is due no later than the 15th day after the end of the month being reported (Exhibit 2, Trustees Resolution effective January 1, 2000), and is delinquent if not received by that date.

The complete list of delinquent months and amounts is set forth in Exhibit 3 to the Cortez Declaration. The amounts due have been computed based on information given to the Trust Fund by defendant.

Under the terms of the Trust Agreement to which defendant is specifically bound

by its contract, failure to make timely payment results in referral to legal counsel and the following consequences:

A. Liquidated damages in an amount equal to 20% of the amount of contributions due, Exhibit 2, Trustees Resolution effective January 1, 2000, Article II, Section F: The Chronic Delinquent.

B. Attorneys fees, Exhibit 2, Article II, Section 12, page 7.

In addition, interest is due pursuant to 29 U.S.C. 1132(g)(2)(B).

II. FACTUAL BACKGROUND

Defendant entered into collective bargaining agreements with the Carpet, Linoleum and Soft Tile Workers, Local No. 12, which require that contributions be paid on behalf of covered employees to the NORTHERN CALIFORNIA FLOOR COVERING INDUSTRY WELFARE FUND. See Exhibit 1 which at Article 16 binds defendant to make such payments.

III. SEPARATE STATEMENT OF UNDISPUTED FACTS

Every essential allegation of the complaint is proved by the affidavits submitted herewith, or has been admitted by the defendant.

COMPLAINT PARAGRAPH

COMPLAINT ALLEGATIONS

PROOF OF ALLEGATION

1	Jurisdiction	Carroll Decl., 29 U.S.C. § 1132, 1145; 29 U.S.C. § 185(a)
2	Status of Plaintiffs	Carroll Decl. et. seq.
5	Defendant bound by contract to pay contributions	Cortez Decl. Exhibit 1
6,7,8, 10	Defendant has failed to pay contributions in a timely manner	Cortez Decl.
9	Demand for payment has been made	Carroll Decl.
12	Contract documents provide for attorney's fees	Carroll Decl. 29 U.S.C. 1132(g)

IV.
ARGUMENT

A. PLAINTIFFS ARE ENTITLED TO RECOVER LIQUIDATED DAMAGES,
INTEREST AND ATTORNEYS FEES AS A MATTER OF LAW.

An award of liquidated damages, interest and attorneys' fees is mandatory under 29 U.S.C. § 1132(g).

Liquidated damages are calculated at 20% of the contribution amount due pursuant to the Trust Agreement, Exhibit 2, Trustees Resolution effective January 1, 2000, Article II, Section F: The Chronic Delinquent.

Interest is allowed and has been computed based on the rates charged by the Internal Revenue Service pursuant to Section 6621 of the Code. The Cortez Declaration sets forth the bases for calculating interest and liquidated damages and a detail sheet summarizing the amounts due is attached as Exhibit 3 to her declaration and is incorporated herein.

Attorneys' fees and costs are based on Exhibit 2, Article II, Section 12, page 7. The Carroll Declaration details the fees and costs incurred in this action.

CONCLUSION

It is respectfully submitted that plaintiffs are entitled to default judgment according to proof.

Dated: May 13, 2008

ERSKINE & TULLEY
A PROFESSIONAL CORPORATION

By: /s/ Michael J. Carroll
Michael J. Carroll
Attorneys for Plaintiffs

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within above-entitled action; my business address is 220 Montgomery Street, Suite 303, San Francisco, California 94104. On May 13, 2008, I served the within *NOTICE OF MOTION AND MOTION FOR DEFAULT JUDGMENT AND ATTORNEYS' FEES, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT, DECLARATIONS OF ROSE CORTEZ AND MICHAEL J. CARROLL IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT and ORDER AND DEFAULT JUDGMENT (PROPOSED FORM)* on the defendant in said action, by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at San Francisco, California, addressed as follows:

Bevil's Floor Service, Inc.
Benny W. Bevil, CEO
533 Burke Street
San Jose, CA 95112

I, SHARON EASTMAN, certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed May 13, 2008 at San Francisco, California.

/s/ Sharon Eastman
SHARON EASTMAN